IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

(1)SUNDER DEVI & ORS. VS GULAB CHAND.
S.B.CIVIL MISC. APPEAL NO.264/1996.
UNDER SECTION 299 OF INDIAN SUCCESSION ACT 1925

(2)LRs. OF GULAB CHAND VS. GOPAL DASS
S.B.CIVIL MISC. APPEAL NO.436/1994
UNDER ORDER 43 RULE 1 C.P.C

(3)LRs. OF GULAB CHAND VS SMT. SUNDER DEVI & ORS.
S.B.CIVIL MISC. APPEAL NO.122/1992
UNDER SECTION 299 OF INDIAN SUCCESSION ACT 1925

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Date of Judgment : December 11th, 2006.

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr.R.K.Thanvi, for the appellant (CMA No.264/96)
Mr.Sajjan Singh & Mr.Durga Ram, for respondents.

Mr.Sajjansingh & Mr.Durga Ram, for appellant (CMA No.436/94& 122/92)
Mr.R.K.Thanvi, for respondent.

BY THE COURT :-

These three appeals are arising out of a matter where letter of administration has been sought on the basis of will dated 14.9.1978 by two applicants namely, one Gopal Das and another Gulab Chand which were decided by District Judge,

Bikaner by separate orders, by order dated 27.7.1992 (application of Gopal Das) and by order dated 27.7.1992 (application of Gulab Chand). Another appeal is arising out of the order dated 7.5.1994 passed by the trial court dismissing Gulab Chand's application for removal of receiver.

Brief facts of the petition filed by applicant Gopal Das are that applicant Gopal Das submitted an application for grant of letter of administration on the basis of will dated 14.9.1978 executed by one Chhagan Lal s/o Tejmal whereby Chhagan Lal bequeathed the right of sewapuja of the temple mentioned in the application. This right was for 7½ days. Gopal Das's application which was registered as No.101/87 (old 87/80) was allowed as the will was proved. In this petition no.101/87, Gulab Chand was one of the contesting party along with others. Gulab Chand being aggrieved against the order dated 27.2.1992 has preferred S.B.Civil Misc. Appeal No.122/92.

Despite challenging the order of the trial court dated 27.2.1992 by filing appeal No.122/1992 before this Court passed on the basis of the will

dated 14.9.1978, said Gulabchand himself submitted an application no.140/1994 for grant of letter of administration on the basis of the same will as he himself was beneficiary under the will dated 14.9.1978 and was given right to perform sewapuja for 15 days by the same executant Chhagan Lal. The trial court allowed Gulabchand's application (petition no.122/92) by order dated 28.11.1995, principally on the basis that the will dated 14.9.1978 has already been proved in Gopal Das's case no.101/1987. Therefore, Gulabchand is also entitled to get the letter of administration about his right to perform sewapuja for 15 days as given to him by the will dated 14.9.1978.

Smt. Sunder Devi, Smt. Tulsi Devi and Smt. Kusum Devi, appellants in S.B. Civil Misc. Appeal No.264/1996 have challenged the order of the trial court dated 18.11.2005 passed in favour of Gulabchand wherein daughter of Gulabchand – Smt. Pushpa Devi is also appellant. It will be worthwhile to mention here that these appellants did not choose to challenge the order of the trial court passed in favour of Gopal Das dated 27.2.1992.

Another S.B. Civil Misc. Appeal No.436/1994 has been preferred by Gulabchand as his application for removal of receiver was dismissed by the trial court after giving some directions by the order dated 7.5.1994.

All these three appeals center round the will dated 14.9.1978 executed by Chhagan Lal.

It appears from the order dated 27.2.1992 and is clear from the record that the issues were framed about the will dated 14.9.1978 and said will was proved by PW1 Gopal Das, PW2 Dwarka Prasad and PW3 Bhagwan Das. Since executant Chhagan Lal got right to perform sewapuja of 15 days through Smt. Champa, who executed will on 29.12.1945 in favour of Chhagan Lal and undisputedly Chhagan Lal was performing sewapuja for 22½ days term, therefore, there appears no justification for challenge to will executed by Smt. Champa after such inordinate delay. Initially applicant Gulabchand of subsequent petition for getting relief by virtue of will dated 14.9.1978, for the reasons best known to him, the disputed will dated 29.12.1945. However, the trial court held that deceased Chhagan Lal got right of

sewapuja of 15 days by the will of Champa dated 29.12.1945. It appears that non-applicant Gulabchand had no knowledge of the complete facts and, therefore, his testimony was not relied upon by the trial court and on the basis of the evidence, the trial court held that the will dated 14.9.1978 has been proved by the applicant Gopal Das. The challenge to findings of the court below on will dated 14.9.1978 cannot survive in view of the fact that the contesting party was only Gulabchand before the trial court and he himself accepted the will by filing another petition for obtaining the letter of administration on the basis of the same will after the decision of the trial court in favour of Gopal Das.

Other appellants Smt. Sunder Devi, Smt. Tulsi Devi, Smt. Pushpa Devi and Smt. Kusum Devi have not appeared before the court below to dispute the will dated 14.9.1978 still have preferred appeal to challenge the order dated 18.11.1995, despite the fact that they were party in the earlier litigation and have not challenged the order of the trial court passed in their presence.

Apart from the above reason, it appears that

the finding of the court below is based on evidence and by evidence, it has been proved that the will dated 14.9.1978 was executed by deceased Chhagan Lal and he had two turns of sewapuja – one for 15 days and another for 7½ days and he bequeathed the said two turns to Gopal Das and Gulabchand, the applicants before the court below, I do not find any merit in the challenge to the will dated 14.9.1978.

The question of validity of adoption of Gulabchand was also raised but in the proceedings of Indian Succession Act for obtaining letter of administration or probate, the title of the property cannot be examined and, therefore, the trial court rightly held that the question of adoption which is subject matter in another suit which is pending cannot be examined in the present proceedings. In view of the above, in case any decision is given determining the adoption of Gopal Das and if that decision may have any affect over the right of the parties and affects the will dated 14.9.1978, then consequence may follow.

In view of the above reasons, S.B. Civil Misc. Appeal Nos.122/92 and 264/1996 are dismissed.

In S.B. Civil Misc. Appeal No.436/1994, appellant Gulabchand has challenged the order of the trial court dated 7.5.1994 which was passed on his application no.169/1992 filed under Section 151 and Order 40 Rule 1 CPC.

It appears from the facts of the case that in the petition for grant of letter of administration No.101/87., the receiver was appointed by the trial court. The receiver was though appointed in the proceedings for letter of administration but he was directed to take account of share of Gulabchand. The appointment of the receiver was made upto the final decision of the civil suit which was pending between the parties despite the fact that the receiver could have continued upto the decision of the petition no.101/1987 filed by Gopal Das but the order is final and binding. It appears from the facts of the case that applicant Gulabchand levelled certain allegations against the receiver and he prayed that the receiver may be directed to produce the accounts and the amount which the receiver has not recovered from Gulabchand may be recovered from the receiver himself. Gulabchand also prayed that another

receiver may be appointed.

The trial court vide order dated 7.5.1994 on finding that the receiver is also not interested, appointed another receiver with direction that the newly appointed receiver shall continue to work as per the directions given in the order dated 27.1.1987.

It appears that the order appointing the receiver to work till the decision of the Civil suit by the Court of Additional Munsiff, was accepted by all the parties and the receiver is continuing even after the decision of petition no.101/1987 by the trial court. Now the appeal against the order of the trial court dated 27.2.1992 has been dismissed but since the litigation is pending in the civil court and the trial Court appointed receiver about 20 years ago, therefore, it will be appropriate to permit the parties to the suit to approach the said civil court for passing appropriate orders either for removal of the receiver in the light of the final decision given by this Court determining the rights of the parties on the basis of will only and the trial court may pass appropriate order either to remove receiver or to continue the

receiver as it deems appropriate.

This order is needed because of the reason that even after the will has been proved, the parties are litigation for their civil rights which can be decided by the civil court and, therefore, in the peculiar facts and circumstances of this case, the receiver could have been appointed by the civil court also if it would not have been appointed by the District Court in the proceedings for grant of letter of administration.

The civil court shall have power to remove the receiver if the civil court is convinced on the facts and circumstances of the case. The civil court may also pass appropriate order for taking account from the receiver and may give any further direction which may be needed in the facts and circumstances of the case.

Therefore, it is ordered that the receiver will continue till any order is passed by the civil court in the suit which was pending in the Court of Additional Munsif No.1, Bikaner at relevant time. The parties will further be free to approach the court of District Judge for appropriate relief under the provisions of the Indian Succession Act, in case appropriate relief

cannot be granted by the said civil court.

With these observations, S.B. Civil Misc. Appeal No.436/94 is disposed of.

(PRAKASH TATIA), J.

S.Phophaliya.